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ATTORNEY FOR
DEFENDANT-RESPONDENT

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STATEMENT OF THE CASE

Nature Of The Case

The state appeals from the district court's order granting Doris Nepa Hays' motion to suppress evidence.

Statement Of The Facts And Course Of The Proceedings

The district court set forth the facts of this case as follows:

On October 12, 2012, at 11:30 p.m., Officer Brian Koch of the Ponderay Police Department was working stationary radar enforcement on Highway 95 at mile marker 474.8 when he visually estimated a northbound passenger vehicle to be exceeding the posted speed limit. He activated the radar, which indicated that the vehicle was traveling 56 mph in a 45 mph zone. He performed a traffic stop on the vehicle on the off ramp to Highway 200 by activating his emergency overhead lights. The onboard camera in the police vehicle recorded the stop, and an audiovisual CD of the stop was admitted at the suppression hearing as State's Exhibit 1.

Approximately twenty-eight (28) minutes elapsed from the stop of the vehicle to the arrest of the defendant. A chronology of events occurring within that time period appears below.

0:00 min: Koch stops the vehicle.

1:42 min: Koch contacts the driver and explains the reason for the stop. Koch engages in a conversation with the driver about why she is upset. The driver claims that she is upset because she is having trouble with her boyfriend.

2:25 min: Koch requests her driver's license, insurance, and registration. The license identifies the driver as the Defendant, Doris Nepa Hays. Koch engages in another conversation about where Hays lives and where she is going.

3:40 min: Koch asks Hays for proof of insurance.

4:00 min: Hays produces her registration.

Koch testified at the suppression hearing that Hays produced an expired insurance.

4:15 min: Koch converses with Hays about her lack of proof of insurance.

4:43 min: Koch tells Hays that he is not going to write her a speeding citation, but will give her a citation for failure to show current insurance, and that if she can produce proof of insurance to the clerk's office the citation will be dismissed.

5:15 min: Koch returns to his patrol vehicle.

5:40 min: Koch makes a radio transmission to Bonner County Sheriff's Deputy Darren Osborn. Koch states: "I am on a citation. I've got a real nervous one that your dog might want to talk to."

5:55 min to 6:48 min: Koch makes a radio transmission to the dispatcher to check Hays' driver's license. The dispatcher tells Koch that Hays' license is valid and clear and that she is a "protected party" against a person named Randy Swanson.

6:49 min: Koch ends the transmission with the dispatcher.

Koch testified that once the dispatcher informed him that Hays' license was valid and clear, he had all the information he needed and began to write the citation.

7:50 min: Koch shines his searchlight on Hays' car.

9:50 min: Deputy Osborn arrives. Koch tells Osborn that Hays was doing 56 in a 45; that her hands were shaking and her voice trembling; and that she had explained that she was nervous because she was having trouble with her boyfriend. Koch states: "She's just nervous like the kind of nervous that has nothing to do with a boyfriend."

10:31 min: Osborn approaches Hays' car, using a flashlight to illuminate the interior of the car, and then, engages in a conversation with Hays. Osborn's audio is off, so the conversation is not recorded.

Osborn testified at the suppression hearing that he introduced himself to Hays, told her his job was criminal and drug interdiction, and that he was there for a drug dog sniff of the exterior of the vehicle. He testified that, although he did not remember the specifics of the conversation, it was very likely he asked if there is anything the dog would signal on. He testified that, upon questioning, Hays acknowledged she smoked marijuana with a couple of friends and that she knew she had a bag of marijuana under her seat and she grabbed the bag from under the seat. Osborn testified he did not detect any marijuana odors emanating from the car upon contact with Hays or when the bag was handed out. He said he did not Mirandize her, nor did he ask for consent to search.

Although unsure he used it in this case, Osborn testified to other language he commonly uses on drug suspects, to wit: "This could be taken care of very easily. If you have some marijuana in your car, just tell us about it"; that marijuana possession can be handled easily with a citation or warning; and that marijuana possession is legal in Montana and Washington.

Hays testified that, in addition to asking if there was anything the dog would signal on, Osborn also stated, more than once, that if she turned over whatever she had in the car, it would be easier on her, but if the drug dog found anything she would be in a lot of trouble. Hays testified that after repeated questioning, she first admitted that she had smoked marijuana several weeks prior, and then after more questions, that she had marijuana in the car. Hays testified that she felt that she didn't have much of a choice but to give Osborn whatever she had in the car.

11:30 min: Koch, still seated inside his patrol vehicle, says: "Today's the 12th."

Koch testified that this statement indicates that he was "just about at the very bottom of the citation, filling out the court date."

12:13 min: Hays hands Osborn the plastic bag containing marijuana through the window. Osborn puts it on the roof of the car. From inside his patrol vehicle, Koch says: "Look at that."

13:00 min: Osborn grabs the plastic bag from the roof and holds it in front of the driver's side window and Hays drops something into the bag.

13:22 min: In his patrol vehicle, Koch states: "He probably gave her the speech of my dog is going to find things. What's your opinion?"

Koch testified that he was explaining the case to his civilian ride along. He stated that the "speech" he was referring to is when a canine handler tells a driver that he is going to walk the dog around the vehicle during the course of the stop, and asks the driver if there [is] anything they want to be honest about.

13:31 min: Koch gets out of his car and approaches Osborn, who is still standing at the driver's side door of Hays' car.

13:40 min: Osborn (his audio now on) says to Hays: "Why don't you come out and hang out over here (pointing towards Koch's patrol car) and we will get the dog to run around the car, if you don't mind...."

13:51 min: Koch and Osborn look in the plastic bag, as Koch inquires as to its contents.

14:01 min: Hays states: "It's just leaves," and explains that it has been sitting in her car for some time.

14:14 min: Koch states: "Come on out and I will give you the citation I already have for you."

14:16 min: Hays exits the vehicle and stands with Koch at the rear of her car. Osborn walks out of view of the camera.

14:25 min: Koch's [sic] explains the citation to Hays, stating that she is only being cited for failure to show proof of insurance, and that if she provides proof to the Clerk of Court that she had insurance at the time of the stop by October 26th, that the ticket would be dismissed[.]

14:51 min: Koch gives Hays the citation and returns her registration, but says he will hold onto her license "until we get done figuring out what we got going on here."

15:05 min: Koch directs Hays away from her vehicle, while Osborn walks the K-9 towards Hays' vehicle. Koch is talking with Hays, asking her what the conversation between her and Osborn was about. Koch tells Hays that he called a K-9 unit because she was acting nervous. Hays explains that she was nervous because she does not trust policeman [sic] because of her past experience with law enforcement's handling of her restraining order.

Hays testified that she is a nervous person and has consulted with Dr. Haugen for psychological assessments. She testified that she is afraid of men in authority, due in part to growing up in an abusive home; she has had restraining orders issued against men; she has requested restraining orders that have not been issued; she just left an abusive relationship a day before, and is in fear of the abuser; that she suffers from attention deficit disorder, anxiety, depression and low self-esteem, and that she finds it difficult to stay on task.

16:35 min: The K-9 completes his sniff and Osborn leads him away from the vehicle and out of view of the camera.

17:28 min: Koch says to Osborn: "I'm assuming the dog said 'yeah'? I wasn't watching."

17:33 min: Osborn reenters the view of the camera and pulls Koch aside to talk about his contact with Hays and whether to search the car.

18:19 min: Osborn says to Koch: "It's your car...."

18:25 min: Osborn walks away from Koch, saying: "I've got her. You've got the car."

18:33 min: Koch advises dispatch and begins to search the car. Osborn engages Hays in conversation.

24:15 min: Koch removes a purse out of the back seat area of the vehicle, places it on the trunk and calls Osborn over. Hays sits on the front bumper of the patrol vehicle.

24:37 min: Hays asks whether she can call someone and let them know. Koch says no, as he searches the purse and discusses its contents with Osborn.

24:58 min: The officers complete the search of the purse and walk over to Hays who is still sitting on the front bumper of the patrol car. Osborn asks her: "How much money have you got on you? Are you working right now?"

25:16 min: Koch asks Hays to turn around and put her hands behind her back. She is then placed under arrest by Osborn and Koch[.]

26:49 min: Koch and Osborn conduct a pat down search of Hays.

28:22 min: Koch reads Hays her Miranda rights.

(R., pp.142-47.) While performing its open air sniff, the drug dog positively alerted on Hays' vehicle. (Tr., p.38, Ls.10-14; p.56, Ls.2-22; p.62, Ls.1-7.) During the subsequent search of the vehicle, Officer Koch discovered methamphetamine. (Tr., p.42, Ls.11-22.)

The state charged Hays with possession of methamphetamine. (R., pp.91-92.) Hays filed a motion to suppress the evidence, arguing that her Miranda¹ rights were violated when she was questioned by law enforcement during the traffic stop, and that the traffic stop was unlawfully extended. (R., pp.99-100, 112-30.) The state responded that the traffic stop was legal and that Hays was not in custody such that the dictates of Miranda applied. (R., pp. 101-06, 134-40.) The district court held a hearing on the motion (see Tr.) and later determined, while the initial stop was lawful, that Hays' detention was impermissibly extended; that Hays was in custody and therefore should

¹ Miranda v. Arizona, 384 U.S. 486 (1966).

have been given Miranda warnings; and that Hays' confession was involuntary. (R., pp.141-57.) On those grounds, the district court granted Hays' suppression motion. (Id.) The state filed a timely notice of appeal. (R., pp.159-61.)

ISSUE

Did the district court err when it granted Hays' suppression motion on the bases that her detention was extended when she handed Deputy Osborn her marijuana while Officer Koch wrote out her traffic citation; that her Miranda rights were violated when she was questioned during a traffic stop; and that her confession was involuntary, despite an absence of coercive police conduct?

ARGUMENT

The District Court Erred When It Granted Hays' Suppression Motion

A. Introduction

During a warrantless search of Hays' vehicle, officers found methamphetamine. Hays moved to suppress the methamphetamine, arguing that her detention was illegal and that her Miranda rights were violated. Incorrectly applying the legal standards associated with traffic stops, the district court granted Hays' motion. Application of the correct legal standards shows no violation of Hays' constitutional rights. The district court's order suppressing evidence should be reversed and this case remanded.

B. Standard Of Review

The standard of review on a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact which are supported by substantial evidence, but freely reviews the application of constitutional principles to those facts. State v. Diaz, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007).

C. A Traffic Stop Is Not Extended When One Officer Asks A Driver Questions About Drugs While Another Officer Checks That Driver's Status With Dispatch And Writes Out A Citation

The district court held that the officers impermissibly extended the duration of Hays' detention when Deputy Osborn arrived on scene with his K9 to question Hays regarding drugs and perform an open air sniff outside Hays' vehicle while Officer Koch checked Hays' driver status and wrote out a traffic citation. Application of the correct

legal standards to the facts of this case, however, shows that the officers did not violate Hays' Fourth Amendment rights.

The constitutional limits on warrantless searches and seizures are well settled. The Fourth Amendment of the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. While routine traffic stops by police officers implicate the Fourth Amendment's prohibition against unreasonable searches and seizures, the reasonableness of a traffic stop is analyzed under Terry v. Ohio, 392 U.S. 1 (1968), because a traffic stop is more similar to an investigative detention than a custodial arrest. Delaware v. Prouse, 440 U.S. 648, 653 (1979); State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003). "An investigative detention is permissible if it is based upon specific articulable facts which justify suspicion that the detained person is, has been, or is about to be engaged in criminal activity." Sheldon, 139 Idaho at 983, 88 P.3d at 1223 (citing Terry, 392 U.S. at 21; United States v. Cortez, 449 U.S. 411, 417 (1981)).

An investigative detention must not only be justified at its beginning, but must also be conducted in a manner that is reasonably related in scope and duration to the circumstances which justified the interference in the first place. Florida v. Royer, 460 U.S. 491, 499-500 (1983); State v. Roe, 140 Idaho 176, 181, 90 P.3d 926, 931 (Ct. App. 2004). "The purpose of a stop is not permanently fixed, however, at the moment the stop is initiated, for during the course of the detention there may evolve suspicion of criminality different from that which initially prompted the stop." Sheldon, 139 Idaho at 984, 88 P.3d at 1224. Routine traffic stops may turn up suspicious circumstances which

could justify an officer asking questions unrelated to the stop. State v. Myers, 118 Idaho 608, 613, 798 P.2d 453, 458 (Ct. App. 1990). “The officer’s observations, general inquiries, and events succeeding the stop may—and often do—give rise to legitimate reasons for particular lines of inquiry and further investigation by an officer.” Id.

“There is no rigid time limit for determining when a detention has lasted longer than necessary; rather, a court must consider the scope of the detention and the law enforcement purposes to be served, as well as the duration of the stop.” State v. Grantham, 146 Idaho 490, 496, 198 P.3d 128, 134 (Ct. App. 2008). Asking a driver limited questions about drugs and weapons is part of a reasonable investigation, even if that was not the purpose of the initial stop. State v. Parkinson, 135 Idaho 357, 362-63, 17 P.3d 301, 306-07 (Ct. App. 2000). When an investigative detention discloses evidence of other possible crimes, officers may extend the detention’s duration and expand the investigation’s focus. State v. Brumfield, 136 Idaho 913, 916-17, 42 P.3d 706, 709-10 (Ct. App. 2001).

Application of these correct legal standards clearly demonstrates that Hays’ investigatory detention complied with the requirements of the Fourth Amendment. As the district court correctly found, Hays’ initial stop was lawful based on her speeding. (R., p.148.) Officer Koch contacted her and asked for her license, registration, and proof of insurance. (R., p.142.) Hays produced a valid license and registration, but her insurance was expired. (R., pp.142-43.) Officer Koch took her documents and returned to his patrol car to check Hays’ driving status through dispatch. (Id.) Dispatch informed Koch that Hays’ license was valid and clear, and he began writing her a citation for no proof of insurance. (Id.) While Officer Koch wrote out the citation, K9 handler Deputy

Osborn arrived. (Id.) Officer Koch informed Deputy Osborn about Hays' nervousness, and Deputy Osborn approached Hays and spoke with her, asking her if she had any drugs she would like to hand over before he ran his drug dog around her car. (R., pp.143-44.) Before Officer Koch finished filling out the citation and giving it to Hays, Hays handed Deputy Osborn a plastic baggie containing marijuana. (R., pp.144-45; Tr., p.31, L.8 – p.33, L.5.) Officer Koch then approached Hays as she exited her vehicle, explained the citation to her, and gave it to her with her registration, but kept her license while Deputy Osborn ran his drug dog around Hays' car. (R., pp.145-46.) The drug dog alerted. (Tr., p.56, Ls.2-22; p.62, Ls.1-7.) Officer Koch searched Hays' vehicle and discovered methamphetamine. (Tr., p.42, Ls.11-42.)

Officer Koch's investigation of Hays' traffic violations was valid under the Fourth Amendment. During the course of that investigation, Deputy Osborn's questioning of Hays gave rise to, at least, a "suspicion of criminality different from that which initially prompted the stop" when Hays handed over the marijuana. It was therefore proper for the officers to expand the scope of their investigation of Hays for the drug-related crime. Finally, the drug dog's positive alert provided the necessary probable cause to search the vehicle under the automobile exception. State v. Tucker, 132 Idaho 841, 843, 979 P.2d 1999, 1201 (1999). The only question for this Court is whether Deputy Osborn could question Hays about whether she had any drugs while Officer Koch wrote out the traffic citation.

Directly on point is the Court of Appeals' opinion in State v. Parkinson. In that case, Parkinson was pulled over for speeding. Parkinson, 135 Idaho at 359, 17 P.3d at 303. Parkinson could not produce proof of valid insurance. Id. The officer who pulled

her over took her information back to his patrol vehicle, contacted dispatch to check Parkinson's driving status, and began to write out a citation for no proof of insurance. Id. "At about that time" a second officer arrived on scene with his drug dog and, with the first officer's approval, "contacted Parkinson and asked her a series of questions about whether she had any open containers of alcohol, various drugs or weapons in the truck." Id. He then ran his drug dog around the truck, and it alerted. Id. at 359-60, 17 P.3d at 303-04. Ultimately officers found methamphetamine, among other things, and Parkinson was arrested. The district court suppressed the evidence on the basis that the second officer's questioning and running the drug dog around her vehicle exceeded the scope of the initial traffic stop. Id. at 361, 17 P.3d at 305. The Court of Appeals reversed, holding that it is permissible for one officer to question a vehicle's driver about drugs and weapons and to take a drug dog around the vehicle while another officer is busy checking with dispatch on the driver's status and writing out a traffic citation. Id. at 362-63, 17 P.3d at 306-07.

The only distinction between Parkinson and the instant case is the district court's erroneous conclusion that Deputy Osborn could not properly ask Hays whether she had any drugs on her person while Officer Koch wrote out Hays' citation for the traffic offense. Deputy Osborn's questioning Hays about drugs before running his drug dog around Hays' car did not exceed the scope of an investigative detention. Deputy Osborn's questioning, which occurred while Officer Koch wrote out Hays' traffic citation, did not extend the duration of Hays' detention. Once Hays handed over the marijuana, the officers had, at least, sufficient reasonable suspicion to properly expand the scope of the initial traffic stop to investigate a possible drug related crime.

Insofar as the district court determined that Officer Koch delayed writing a traffic citation until Deputy Osborn arrived with his K9 (see R., p.151), this factual finding is unsupported by the evidence produced during the suppression hearing and is clearly erroneous. As soon as dispatch told Officer Koch that Hays' license was clear, at a little less than seven minutes into the encounter with Hays, Officer Koch began writing the traffic citation. (R., p.143; Tr., p.21, L.25 – p.22, L.6.) Within a couple of minutes, Deputy Osborn arrived and began speaking with Hays. (Id.) About a minute later, Officer Koch was nearing the bottom of the citation, figuring out an appropriate court date. (R., p.144; Tr., p.30, L.20 – p.31, L.7.) After filling in the court date, Officer Koch had to indicate on the citation that he served the citation on Hays, the date he served it, sign the citation, indicate his officer identification number, flip to Hays' copy of the citation and indicate that the infraction was for insurance, cover the misdemeanor portion of the citation with a clerk of court decal so "they know only the infraction part applies to them," tear out Hays' copy of the citation, and gather up her paperwork to be able to return it while he served the citation. (Tr., p.31, L.8 – p.32, L.2.) While he was accomplishing all of that, Hays handed Deputy Osborn her baggie of marijuana. (R., p.145; Tr., p.32, L.16 – p.33, L.5.) The district court's determination that Officer Koch "should have delivered" the citation to Hays "right after" he "spoke to the dispatcher" (R., p.151) simply ignores the fact that no such citation existed. Officer Koch had to fill out the citation first. He did not delay filling out that citation; he diligently pursued the purpose of the stop before Deputy Osborn arrived and spoke to Hays, while Deputy Osborn spoke to Hays, and after Deputy Osborn spoke to Hays. Officer Koch did not unreasonably extend Hays' detention.

Hays' Fourth Amendment rights were never violated, and the district court's order suppressing evidence on that erroneous basis should be reversed.

D. Officers Did Not Violate Hays' Fifth Amendment Rights

The district court appears to believe that the officers could not use Hays' handing over the baggie of marijuana to develop reasonable suspicion to investigate a drug-related crime, on the basis that Hays' relinquishing the marijuana, which the district court styles a "confession," was coerced and accomplished in violation of Miranda. (R., pp.152-56.) Application of the correct legal standards to the facts found by the district court clearly shows that this ruling is erroneous on at least three independent bases: First, Hays' was never in custody such that the dictates of Miranda applied to this case. Second, even if Miranda did apply, physical evidence cannot be suppressed merely for failure to give Miranda warnings. Third, there is no showing that Hays' voluntary handing over of the marijuana was the result of coercive police conduct.

1. The Temporary And Relatively Nonthreatening Detention Involved In A Traffic Stop Does Not Constitute "Custody" For Purposes Of *Miranda*

The district court erroneously determined that Hays was in custody during her traffic stop when Deputy Osborn asked her some questions regarding drugs before running his K9 around her vehicle, and therefore Hays should have been Mirandized. (R., pp.152-54.) Hays was not in custody prior to her arrest because she was not deprived of her freedom of action to a degree associated with formal arrest. The dictates of Miranda, therefore, do not apply.

To safeguard the privilege against self-incrimination afforded by the Fifth Amendment of the United States Constitution, the United States Supreme Court held in Miranda v. Arizona, 384 U.S. 436 (1966), that before an individual is subjected to custodial interrogation, the interrogating officers must advise the individual of certain rights, including the right to remain silent. Id. at 478-79. The defendant bears the burden of establishing that he was in custody for purposes of Miranda. State v. James, 148 Idaho 574, 577, 225 P.3d 1169, 1172 (2010). The test for determining whether an individual is in custody for purposes of Miranda is whether, considering the totality of the circumstances surrounding the interrogation, there was a “formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.” California v. Beheler, 463 U.S. 1121, 1125 (1983) (quoting Oregon v. Mathiason, 429 U.S. 492, 495 (1977)). Relevant factors in making this determination include the time, location, public visibility of the interrogation, the conduct of the officers, the nature and manner of the questioning, the extent to which officers confront the suspect with evidence of his guilt, and the presence of other persons. State v. Albaugh, 133 Idaho 587, 591, 990 P.2d 753, 757 (Ct. App. 1999); State v. Medrano, 123 Idaho 114, 117, 844 P.2d 1364, 1367 (Ct. App. 1992). Because the “in custody” test for Miranda requires a restraint on freedom associated with formal arrest, “the temporary and relatively nonthreatening detention involved in a traffic stop ... does not constitute Miranda custody.” Maryland v. Shatzer, 559 U.S. 98, ___, 130 S.Ct. 1213, 1224 (2010) (citing Berkemer v. McCarty, 468 U.S. 420, 439-40 (1984)).

Correctly applying these relevant legal standards to the facts found by the district court clearly establishes that Hays was not in custody prior to her arrest. The traffic

stop occurred in a public area along a public highway. (R., p.142.) Before Hays handed Deputy Osborn her baggie of marijuana, the traffic stop had only lasted 12 minutes, 13 seconds. (R., p.145.) According to Hays, Deputy Osborn merely asked her if she had anything in her car his drug dog would alert on, and informed her that it would be better for her to turn over whatever she had rather than wait for the dog to alert. (R., p.144.) Prior to arrest, Hays was never handcuffed (R., p.147), nor was she informed that her detention would be anything other than temporary. Viewing these factors objectively, a reasonable person would not believe there was a “formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.”

Nonetheless, the district court determined that because Hays “was seated in her car with Osborn standing at the driver’s side window, Koch had her driver’s license and registration, it was nearly midnight and there were two officers and a K9 on scene,” she was in custody for purposes of Miranda. (R., pp.152-54.) These factors, while arguably relevant to the inquiry, do not establish custody for purposes of Miranda. There is no question that Hays was seized when she was subjected to a traffic stop. Everything the district court relied on, however, is consistent with a traffic stop, and the “detention involved in a traffic stop ... does not constitute Miranda custody.” Shatzer, 559 U.S. at ___, 130 S.Ct. at 1224; see also State v. Young, 136 Idaho 711, 720, 39 P.3d 651, 660 (Ct. App. 2002) (where a team of officers did not draw their weapons, use force or handcuffs, the suspect was not in custody for purposes of Miranda; even though “the officers controlled [his] movements to a certain degree, they did not control his movements to a degree associated with formal arrest”).

The Idaho Supreme Court's opinion in State v. Ybarra, 102 Idaho 573, 634 P.2d 435 (1981), is instructive. In that case, Ybarra was a suspect in a bank robbery. Id. at 574, 634 P.2d at 436. He was stopped by several officers, ordered out of his car at gunpoint, and frisked. Id. After determining that Ybarra was not armed, two officers questioned him about the robbery "while the other officers receded from the scene." Id. Ybarra made several incriminating statements to the officers. Id. He subsequently moved to suppress those statements, arguing that they were obtained in violation of his Miranda rights. Id. at 576, 634 P.2d at 438. The Idaho Supreme Court, however, held that Ybarra was not in custody because he was not "deprived of his freedom of action in a significant way so that Miranda warnings were required." Id. at 576-77, 634 P.2d at 438-39.

While recognizing that "a multitude of police cars and officers present[ed] a vastly more intimidating scenario" than would have occurred had only one officer stopped Ybarra and questioned him, Id. at 577, 634 P.2d at 439, the Court also noted that virtually every police-citizen encounter will result in some degree of intimidation, but that is not determinative of the question of custody:

Any interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But police officers are not required to administer Miranda warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect. Miranda warnings are required only where there had been such a restriction on a person's freedom as to render him "in custody." It was that sort of coercive environment to which Miranda, by its terms was made applicable, and to which it is limited.

Id. (quoting Mathiason, 429 U.S. at 495). If Ybarra, removed from his car at gunpoint and frisked by a team of officers, was not in custody for purposes of Miranda, then Hays, who was subjected to a far more benign detention, was also not in custody.

The facts found by the district court in relation to Hays' suppression motion clearly establish that Hays was detained. They do not, however, establish that Hays was deprived of her freedom of action in such a significant way so as to implicate Miranda. Because Hays was not in custody equivalent to formal arrest, the dictates of Miranda do not apply to her traffic stop. The district court's erroneous ruling to the contrary should be reversed and this case remanded.

2. Physical Evidence Cannot Be Suppressed Merely Because Police Fail To Give A Suspect *Miranda* Warnings

Even assuming, *arguendo*, that Hays was in custody during her traffic stop such that the dictates of Miranda applied, evidence of the marijuana would not be subject to suppression for a failure to give Miranda warnings. As the United States Supreme Court explained in United States v. Patane, 542 U.S. 630 (2004):

[T]he *Miranda* rule is a prophylactic employed to protect against violations of the Self-Incrimination Clause. The Self-Incrimination Clause, however, is not implicated by the admission into evidence of the physical fruit of a voluntary statement. Accordingly, there is no justification for extending the *Miranda* rule to this context. And just as the Self-Incrimination Clause primarily focuses on the criminal trial, so too does the *Miranda* rule. The *Miranda* rule is not a code of police conduct, and police do not violate the Constitution (or even the *Miranda* rule, for that matter) by mere failures to warn. For this reason, the exclusionary rule articulated in such cases as *Wong Sun* does not apply.

Id. at 636-37. Thus, physical evidence cannot be suppressed merely due to a failure to give Miranda warnings. Rather, for the exclusionary rule to possibly apply, police must

obtain the evidence through coercion. State v. Garcia, 143 Idaho 774, 781, 152 P.3d 645, 652 (Ct. App. 2006). For all of the reasons explained below, there was no coercion in this case.

3. Hays Voluntarily Handed Over The Marijuana

Finally, the district court held that Hays' "confession was not a product of free will and was involuntary." (R., pp.154-56.) This legal conclusion, see Arizona v. Fulminante, 499 U.S. 279, 287 (1991) (the "ultimate determination of voluntariness" is a legal question, freely reviewed), is not supported by the relevant caselaw. "[C]oercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment." Colorado v. Connelly, 479 U.S. 157, 167 (1986). Nothing in the record indicates that Hays' handing Deputy Osborn her baggie of marijuana was a "confession," much less the result of "coercive police activity."

According to Hays, Deputy Osborn asked her if she had any drugs, indicating that he was going to run his drug dog around her car and that it would be better for her to tell him if she had any rather than wait for the drug dog to alert. (R., p.144.) Hays admitted that she occasionally smoked marijuana and, after repeated questioning, admitted that she had marijuana in the car. (Id.) Hays then gave Deputy Osborn the baggie containing marijuana. (R., p.145.) The evidence thus demonstrates that Hays relinquished her marijuana voluntarily and not as the product of police coercion.

The district court, however, determined that Hays' handing over the marijuana was involuntary based on Deputy "Osborn not giving her Miranda warnings prior to questioning Hays, the repeated questioning, length of the detention, Hays' apparent

hypersensitivity, and Osborn's direct or implied promises." (R., p.156.) First, as explained above, Deputy Osborn was not required to give Miranda warnings during the traffic stop. This error alone requires reversal. Second, the remaining circumstances did not rise to the level of overbearing Hays' free will: Deputy Osborn's "repeated questioning" was in response to Hays' suspicious behavior and the answers she was giving the officer. (Tr., p.50, L.19 – p.52, L.13.) The length of the detention, from the initial stop to where Hays handed over her marijuana, was only 12 minutes, 13 seconds. (R., p.145.) From Deputy Osborn's initial contact with Hays to that same point was less than two minutes. (R., pp.143-45.) Although Hays testified that she feared men in authority (R., p.146; Tr., p.66, Ls.12-23), there is no indication that the police were aware of Hays' "hypersensitivity," let alone that they attempted to exploit it. In addition, the record discloses that Deputy Osborn's "direct or implied promise" that it would be better for Hays to surrender any drugs rather than wait for the drug dog to alert was honored: The marijuana, which Hays surrendered, resulted in a citation; the methamphetamine, which she attempted to hide, resulted in a felony charge. No circumstance in this case even suggests police coercion. Hays' decision to hand over the marijuana was voluntary, and the district court's ruling to the contrary should be reversed and this case remanded.

Hays' investigative detention was reasonable and complied with the standards of the Fourth and Fifth Amendments. The district court erred in its application of the relevant legal standards to the facts found. The court's order suppressing evidence found during the search of Hays' vehicle should therefore be reversed and this case remanded for further proceedings.

CONCLUSION

The state respectfully requests that this Court reverse the district court's order and remand for further proceedings.

DATED this 4th day of December, 2013.



RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 4th day of December, 2013, served two true and correct copies of the attached BRIEF OF RESPONDENT by placing the copies in the United States mail, postage prepaid, addressed to:

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RJS/pm